



Brussels, 21 August 2020  
REV2 – replaces the notice (REV1)  
dated 11 October 2019

## NOTICE TO STAKEHOLDERS

### WITHDRAWAL OF THE UNITED KINGDOM AND EU RULES IN THE FIELD OF TRADE IN PROTECTED SPECIES OF WILD FAUNA AND FLORA

Since 1 February 2020, the United Kingdom has withdrawn from the European Union and has become a “third country”.<sup>1</sup> The Withdrawal Agreement<sup>2</sup> provides for a transition period ending on 31 December 2020. Until that date, EU law in its entirety applies to and in the United Kingdom.<sup>3</sup>

During the transition period, the EU and the United Kingdom will negotiate an agreement on a new partnership, providing notably for a free trade area. However, it is not certain whether such an agreement will be concluded and will enter into force at the end of the transition period. In any event, such an agreement would create a relationship which in terms of market access conditions will be very different from the United Kingdom’s participation in the internal market,<sup>4</sup> in the EU Customs Union, and in the VAT and excise duty area.

Therefore, all interested parties, and especially economic operators, are reminded of the legal situation applicable after the end of the transition period (Part A below). This notice also explains certain relevant separation provisions of the Withdrawal Agreement (Part B below), as well as the rules applicable in Northern Ireland after the end of the transition period (Part C below).

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<sup>1</sup> A third country is a country not member of the EU.

<sup>2</sup> Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, OJ L 29, 31.1.2020, p. 7 (“Withdrawal Agreement”).

<sup>3</sup> Subject to certain exceptions provided for in Article 127 of the Withdrawal Agreement, none of which is relevant in the context of this notice.

<sup>4</sup> In particular, a free trade agreement does not provide for internal market concepts (in the area of goods and services) such as mutual recognition, the “country of origin principle”, and harmonisation. Nor does a free trade agreement remove customs formalities and controls, including those concerning the origin of goods and their input, as well as prohibitions and restrictions for imports and exports.

**Advice to stakeholders:**

To address the consequences set out in this notice, stakeholders intending to trade in specimens of protected species in the EU after the end of the transition period are in particular advised to ensure that they hold the necessary valid CITES permits and present these to the relevant border inspection points.

**Please note:**

This notice does not address EU rules on:

- animal and plant health;
- food and feed;
- animal transport;
- movement of live animals;
- invasive alien species.

For these aspects, other notices are in preparation or have been published.<sup>5</sup>

In addition, attention is drawn to the more generic notice on prohibitions and restrictions, including import/export licences.

**A. LEGAL SITUATION AFTER THE END OF THE TRANSITION PERIOD**

After the end of the transition period, Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein<sup>6</sup> no longer applies to the United Kingdom.<sup>7</sup> This has in particular the following consequences:

**1. IMPORT, EXPORT AND RE-EXPORT OF PROTECTED SPECIES BETWEEN THE EU AND THE UNITED KINGDOM**

According to Article 4 of Regulation (EC) No 338/97, the **introduction into the EU** of specimens of species included in Annexes A and B to that Regulation ("protected species") is subject to the prior presentation, at the customs office of entry, of an import permit issued by a management authority of the EU Member State of

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<sup>5</sup> [https://ec.europa.eu/info/european-union-and-united-kingdom-forging-new-partnership/future-partnership/preparing-end-transition-period\\_en](https://ec.europa.eu/info/european-union-and-united-kingdom-forging-new-partnership/future-partnership/preparing-end-transition-period_en)

<sup>6</sup> OJ L 61, 3.3.1997, p. 1.

<sup>7</sup> Regarding the applicability of Regulation (EC) No 338/97 to Northern Ireland, see Part C of this notice.

destination. Article 4 of Regulation (EC) No 338/97 also lays down the conditions determining the issuance of this import permit.

According to Article 5(1) and (2) of Regulation (EC) No 338/97, the **export from the EU** to a third country of specimens of protected species is subject to the prior presentation, at the customs office at which the export formalities are completed, of an export permit issued by a management authority of the EU Member State in which the specimens are located. Article 5(1) and (2) of Regulation (EC) No 338/97 also lays down the conditions determining the issuance of these export permits.

According to Article 5(1) and (3) of Regulation (EC) No 338/97, the **re-export** from the EU to a third country is subject to a re-export certificate issued by a management authority of the EU Member State where the specimen is located.

After the end of the transition period, Article 4 and Article 5(1), (2) and (3) of Regulation (EC) No 338/97 apply to the introduction and (re-)export of specimens of protected species **between the United Kingdom and the EU**.

More specifically, this means inter alia the following:

- An export permit will have to be issued by the exporting EU Member State when specimens of protected species are moved to the United Kingdom.
- An import permit will have to be issued by the importing EU Member State when specimens of protected species are moved from the United Kingdom.
- A re-export certificate will have to be issued by the re-exporting EU Member State when specimens of protected species are moved to the United Kingdom.

The same principles apply to the movement of specimens of species listed in Annex C and D of Regulation (EC) No 338/97, with regard to the respective CITES documents required for such movements.

## **2. VALIDITY OF DOCUMENTS ISSUED BY UNITED KINGDOM**

Export permits and re-export certificates (according to Article 5(1) of Regulation (EC) No 338/97) as well as certificates for intra-EU trade (according to Article 8(3) of Regulation (EC) No 338/97) issued by the United Kingdom will no longer be valid for such transactions after the end of the transition period.

This may lead to the need for a management authority of an EU Member State to re-issue an export permit, a re-export certificate or an Article 8(3) certificate previously issued by the management authority of the United Kingdom. In this case, the fact that the permit or the certificate had been previously issued by the United Kingdom on the basis of Regulation (EC) No 338/97 can be taken into account when issuing the new permit or certificate.

## **3. DEROGATIONS - PERSONAL AND HOUSEHOLD EFFECTS**

Article 7(3) of Regulation (EC) No 338/97 provides for derogations for introduction and (re-) export of certain specimens being personal or household effects. Where the relevant conditions are met, these derogations will apply to movements of personal

and household effects between the United Kingdom and the EU after the end of the transition period.

#### **4. TRAVELLING-EXHIBITION CERTIFICATE, PERSONAL OWNERSHIP CERTIFICATE, SAMPLE COLLECTION CERTIFICATE, MUSICAL INSTRUMENT CERTIFICATE**

Chapters VII (travelling-exhibition certificate), VIII (personal ownership certificate), VIIIa (sample collection certificate) and VIIIb (musical instrument certificate) of Commission Regulation (EC) No 865/2006<sup>8</sup> provide for certificates to facilitate cross-border movements of certain specimens of protected species.

These certificates can be used as import permit, export permit, or re-export certificate.<sup>9</sup>

These certificates are mutually recognised amongst Member States according to Article 11(1) of Regulation (EC) No 338/97.

Certificates issued by the CITES authority of the United Kingdom before the end of the transition period can, after the end of that period, be used on the basis of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), to which the United Kingdom continues to be a Party.<sup>10</sup>

#### **5. DESIGNATED CUSTOMS OFFICES FOR THE INTRODUCTION INTO AND EXPORT FROM THE EU**

According to Article 4 of Regulation (EC) No 338/97, the introduction of specimens protected under it is subject to the necessary checks and the prior presentation of an import permit at the border customs office at the point of introduction.

According to Article 5 of Regulation (EC) No 338/97, the (re-)export of certain specimens is subject to the necessary checks and the prior presentation of an export permit or re-export certificate at the customs office at which the export formalities are completed.

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<sup>8</sup> Commission Regulation (EC) No 865/2006 of 4 May 2006 laying down detailed rules concerning the implementation of Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein (OJ L 166, 19.6.2006, p. 1).

<sup>9</sup> Articles 31, 38, 44b and 44i of Regulation (EC) No 865/2006.

<sup>10</sup> See, with regard to travelling-exhibition certificates and certificate standard forms, Resolution Conf. 12.3 (Rev. CoP17) on *Permits and certificates*, <https://cites.org/sites/default/files/document/ERes-12-03-R17.pdf>; with regard to personal ownership certificates, Resolution Conf. 10.20 on *Frequent cross-border movements of personally owned live animals*, <https://cites.org/sites/default/files/document/E-Res-10-20.pdf>; with regard to musical instrument certificates, Resolution Conf. 16.8 (Rev. CoP17) on *Frequent cross-border non-commercial movements of musical instruments*, <https://cites.org/sites/default/files/document/E-Res-16-08-R17.pdf>.

Member States have to designate these customs offices and notify them to the Commission, which publishes their list in the *Official Journal of the European Union*.<sup>11 12</sup>

Where, after the end of the transition period, specimens of protected species leave or enter the EU customs territory, the permit or certificate required under Regulation (EC) No 338/97 has to be presented to the customs offices.

## **B. RELEVANT SEPARATION PROVISIONS OF THE WITHDRAWAL AGREEMENT**

Article 47(1) of the Withdrawal Agreement provides that movements ongoing at the end of the transition period are to be treated as intra-Union movements regarding importation and exportation licencing requirements in EU law.

**Example:** A specimen of protected species, the movement of which is ongoing between the EU and the United Kingdom at the end of the transition period can still enter the EU or the United Kingdom without export or import permits. Such movements will need to be covered by the necessary documentation under Regulation (EC) No 338/97 for intra-EU trade, where applicable.

## **C. APPLICABLE RULES IN NORTHERN IRELAND AFTER THE END OF THE TRANSITION PERIOD**

After the end of the transition period, the Protocol on Ireland/Northern Ireland (“IE/NI Protocol”) applies.<sup>13</sup> The IE/NI Protocol is subject to periodic consent of the Northern Ireland Legislative Assembly, the initial period of application extending to 4 years after the end of the transition period.<sup>14</sup>

The IE/NI Protocol makes certain provisions of EU law applicable also to and in the United Kingdom in respect of Northern Ireland. In the IE/NI Protocol, the EU and the United Kingdom have furthermore agreed that insofar as EU rules apply to and in the United Kingdom in respect of Northern Ireland, Northern Ireland is treated as if it were a Member State.<sup>15</sup>

The IE/NI Protocol provides that Regulation (EC) No 338/97 applies to and in the United Kingdom in respect of Northern Ireland.<sup>16</sup>

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<sup>11</sup> Article 12 of Regulation (EC) No 338/97.

<sup>12</sup> OJ C 72, 18.3.2008, p. 52. See also the list published by the Commission at [https://ec.europa.eu/environment/cites/pdf/list\\_points\\_of\\_entry.pdf](https://ec.europa.eu/environment/cites/pdf/list_points_of_entry.pdf).

<sup>13</sup> Article 185 of the Withdrawal Agreement.

<sup>14</sup> Article 18 of the IE/NI Protocol.

<sup>15</sup> Article 7(1) of the Withdrawal Agreement in conjunction with Article 13(1) of the IE/NI Protocol.

<sup>16</sup> Article 5(4) of the IE/NI Protocol and section 26 of annex 2 to that Protocol.

This means that references to the EU in Parts A and B of this notice have to be understood as including Northern Ireland, whereas references to the United Kingdom have to be understood as referring only to Great Britain.

Where EU rules provide for Member States to issue import or export permits or re-export certificates, the United Kingdom in respect of Northern Ireland is responsible for issuing those permits or certificates.

More specifically, this means *inter alia* the following:

- The movement of specimens of protected species from Northern Ireland to the EU and *vice-versa* is not an import but an intra-EU movement for the purposes of Regulation (EC) No 338/97;
- The movement of specimens of protected species from Great Britain or from a third country to Northern Ireland is an import for the purposes of Regulation (EC) No 338/97.
- The movement of specimens of protected species from Northern Ireland to a third country is an export for the purposes of Regulation (EC) No 338/97.

EU to NI / NI to EU (e.g. Brussels to Belfast or vice versa)	GB to NI (e.g. London to Belfast)	EU to GB (e.g. Brussels to London)	GB to EU (e.g. London to Brussels)
<ul style="list-style-type: none"> <li>• Considered as intra-EU trade</li> <li>• Normal intra-EU rules apply (certificate for Annex A-listed species, proof of legal acquisition for Annex B-listed species)</li> </ul>	<ul style="list-style-type: none"> <li>• UK-GB issues export permit</li> <li>• UK-NI issues import permit (according to EU rules)</li> <li>• Border controls done by UK authorities at exit and entry point.</li> </ul>	<ul style="list-style-type: none"> <li>• EU-MS (e.g. Belgium) issues export permit</li> <li>• UK-GB issues import permit (if required)</li> <li>• Border controls at normal exit and entry point</li> </ul>	<ul style="list-style-type: none"> <li>• UK-GB issues export permit</li> <li>• EU-MS (e.g. Belgium) issues import permit</li> <li>• Border controls at normal exit and entry points</li> </ul>

According to Article 6(1) of the IE/NI protocol, provisions of Union law made applicable by the Protocol which prohibit or restrict the exportation of goods<sup>17</sup> are only to be

<sup>17</sup> This includes any prohibitions and restrictions on imports and exports resulting from Regulation (EC) No 338/97, incl. decisions taken by bodies established by Regulation (EC) No 338/97 (e.g., an opinion

applied to trade between Northern Ireland and other parts of the United Kingdom to the extent strictly required by any international obligations of the Union.

More specifically, this means *inter alia* the following:

- Movements from Northern Ireland to Great Britain are subject to the requirements set out in Regulation (EC) No 338/97, including any decisions taken by bodies established by Regulation (EC) No 338/97 (e.g., an opinion by the Scientific Review Group), as well as recommendations contained in a Commission Guidance document, where these requirements flow from CITES provisions.
- If the EU has listed a species that is not listed in CITES in Annex A or B to the Regulation and there is an EU export ban established for that species, then the export of such specimens would be possible from Northern Ireland to Great Britain, because such an export ban would not be strictly required by an international obligation of the EU.<sup>18</sup>

The IE/NI Protocol excludes the possibility for the United Kingdom in respect of Northern Ireland to participate in the decision-making and decision-shaping of the Union.<sup>19 20</sup>

The website of the Commission on EU rules on wildlife trade<sup>21</sup> provides general information concerning applicable Union legislation. These pages will be updated with further information, where necessary.

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by the Scientific Review Group), as well as recommendations contained in a Commission Guidance document.

<sup>18</sup> Normally, under EU law, one cannot export wild specimens of Annex A species for commercial purposes (Art. 5.2.(c) (ii) of Regulation (EC) No 338/97), whereas the same species listed under CITES Appendix II can be commercially traded under the CITES Convention. Therefore, for example, a wild caught barn owl (*Tyto alba*, App. II) could be commercially exported from Northern Ireland to the United Kingdom but not to a third country.

<sup>19</sup> Where an information exchange or mutual consultation is necessary, this will take place in the joint consultative working group established by Article 15 of the IE/NI Protocol.

<sup>20</sup> For example, United Kingdom, in respect of Northern Ireland, cannot participate in the Committee (Article 18 of Regulation (EC) No 338/97) or the Scientific Review Group (Article 17 of Regulation (EC) No 338/97), and consequently also not propose or object to any decisions made or opinions issued by those bodies

<sup>21</sup> [https://ec.europa.eu/environment/cites/legislation\\_en.htm](https://ec.europa.eu/environment/cites/legislation_en.htm)